

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

CHARLES STRICKLAND §  
v. § CIVIL ACTION NO. 2:08cv362  
THE STATE OF TEXAS, ET AL. §

**MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT**

The Petitioner Charles Strickland, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Court records show that this is the third federal habeas corpus petition which Strickland has filed concerning this same conviction. *See Strickland v. Director, TDCJ-CID*, civil action no. 2:01cv262 (E.D.Tex., dismissed July 10, 2003, certificate of appealability denied by Fifth Circuit April 21, 2004); *Strickland v. State of Texas, et al.*, civil action no. 2:89cv24 (E.D.Tex., dismissed with prejudice March 7, 1991, no appeal taken). After review of the pleadings, the Magistrate Judge issued a Report on October 23, 2008, recommending that the petition be dismissed because Strickland made no showing that he has received permission from the Fifth Circuit Court of Appeals to file a successive petition, as required by 28 U.S.C. §2244(b)(3). In fact, the Magistrate Judge said, Strickland was denied leave to file a successive petition by the Fifth Circuit on August 7, 2007. The Magistrate Judge further recommended that Strickland be denied a certificate of appealability *sua sponte*, with the understanding that this denial refers solely to an appeal of this

decision and would have no effect upon Strickland’s right to seek permission from the Fifth Circuit to file a successive petition.

Strickland filed objections to the Magistrate Judge’s Report on November 3, 2008. In his objections, he says that he forgot to include a copy of the State’s arrest warrant and search warrant, which were tainted and unconstitutional, and would be “ammunition for the honorable jurists to debate and find other ways to order the relief that petitioner is entitled to.” He says that he is “not a terrorist or under a death penalty,” apparently referring to the title of the Anti-Terrorism and Effective Death Penalty Act of 1996, which is the law that enacted the requirement that persons seeking to file successive habeas corpus petitions obtain leave from the court of appeals to do so. He says that he is eighty years old and enlisted in the U.S. Army Air Corps in 1944, but makes no mention of the basis of the Magistrate Judge’s recommendation, which is that leave from the Fifth Circuit is required to file a successive petition and Strickland has not obtained such leave. His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the Report of the Magistrate Judge, the Petitioner’s objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Petitioner are without merit. It is accordingly

ORDERED that the Petitioner’s objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice, with refiling conditioned on receipt of permission from the Fifth Circuit Court of Appeals to file a second or successive petition. 28 U.S.C. §2244(b)(3). He may not refile this petition without first obtaining such leave, and the dismissal of this petition shall have no effect upon his right to seek permission from the Fifth Circuit to file a second or successive petition. It is further

ORDERED a certificate of appealability be and hereby is denied sua sponte, with such denial referring solely to an appeal of the decision in this case and having no effect upon Strickland's right to seek permission from the Fifth Circuit to file a successive petition, nor upon his right to pursue his claims fully in the event that such permission is obtained. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 2nd day of February, 2009.

  
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T. JOHN WARD  
UNITED STATES DISTRICT JUDGE